

STATUS OF SWAINS ISLAND

FEBRUARY 20, 1925.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. MOORES of Indiana, from the Committee on Foreign Affairs, submitted the following

REPORT

[To accompany H. J. Res. 294]

The Committee on Foreign Affairs submits the following report in explanation and approval of the accompanying resolution (H. J. Res. 294), referred by the House to this committee.

The Senate resolution simply proposes to extend the sovereignty exercised by the United States over American Samoa so as to include a small island north by east of Apia some 205 miles, which is the property of an American citizen named Alexander Jennings and is known by the various names of Quiros, Gente Hermosa, Olosega, Swains and Jennings Island.

The island is a mile and a half long and about 1 mile wide. It has an extensive brackish lagoon at its center and is surrounded by a coral reef, which has been blasted out at the western end to permit the passage of small boats; but the island has no anchorage. About 800 acres are planted with coconuts, and roads are made throughout the island. Copra is exported. The only fresh water comes from rains, which are frequent and supply the cisterns. It is 7 or 8 miles in circumference and is 20 feet above the sea level. It has a church and a native missionary. In 1919 the population consisted of about 30 adults and some 40 children, all Polynesians or half-castes.

It was discovered by Quiros in 1606, and was somewhat carelessly inspected by the United States exploring expedition in 1840.

The subsequent history of the island may be found in detail in the letter of the Secretary of State, attached hereto.

Inasmuch as the island has belonged continuously since 1856 to three generations of American citizens and is now the property of Alexander Jennings, an American citizen, who has no court in which to settle any dispute, and for the probate of wills, or registration of

conveyances, and is reported by the foreign service to be a man of good education and high character, the committee recommends the adoption of the Senate resolution.

The PRESIDENT:

I have the honor to invite attention to the anomalous status of Swains Island (otherwise known as Quiros, Gente Hermosa, Olosega, or Jennings Island), an isolated atoll in the Pacific Ocean, lying in latitude $11^{\circ} 3'$ south, longitude $170^{\circ} 55'$ west, approximately 200 miles north-by-east from Apia, Samoa, and to suggest that, if you approve, the case be brought to the attention of Congress with the recommendation that the sovereignty of the United States be extended over the island and that it be placed under the jurisdiction of the government established in American Samoa.

The following statement will indicate this Government's relation to the island for more than half a century:

It appears that in 1856, Captain Turnbull, a British subject, the alleged discoverer of Swains Island, gave the island to Eli Jennings, who is reported to have always held himself out as an American citizen. Jennings married a native woman of Upolou, Samoa, and resided on the island until his death in 1878, at which time, under his will, the island became the property of his wife, Maria Jennings. The marriage certificate and will of Eli Jennings were recorded in the American consulate at Apia. By the will of the widow, Maria Jennings, the island became, at her death in 1891, the property of her son, Eli Hutchinson Jennings.

In September, 1909, the resident commissioner in the Gilbert Islands visited Swains Island and collected approximately \$85 in taxes from Eli Hutchinson Jennings for the British Government. In response to an inquiry from the American consul at Apia, this department, on November 9, 1910, instructed the consul that Mr. Jennings should file a diplomatic claim against the British Government for recovery of the amount paid as taxes, but added, "From the facts before the department, it is not clear whether Swains Island was ever in fact discovered and occupied with the sanction of the United States and whether the United States has ever actually exercised jurisdiction over the island. In the absence of further evidence on these points, it is an unsettled question whether this Government could well maintain a claim to sovereignty over this island, based on the mere occupation thereof by a private citizen." However, before the department's instruction was received by the consul the assistant high commissioner of the British Government for the western Pacific informed the consul that the British Government considered Swains Island to be American territory and that the taxes collected from Mr. Jennings would be returned to him.

During the summer of 1917 certain natives, former residents of Swains Island, appeared before the native court of Western Samoa and filed charges of cruelty against Mr. Jennings. The British Embassy at Washington, under date of January 30, 1918, informed the department that His Majesty's Government understood that Swains Island was American territory and, accordingly, transmitted to the department for consideration a copy of the evidence presented in support of the charges. The evidence was referred to the Secretary of the Navy, who caused an investigation to be made respecting the conditions obtaining on the island. Such investigation disclosed that the complaints were not justified and the department so advised the British Embassy under date of January 20, 1919.

Eli Hutchinson Jennings died at Swains Island in October, 1920. By his last will and testament all his property, including Swains Island, was left to his daughter, Anne Eliza Carruthers, wife of Irving Hetherington Carruthers, a British subject, and to his son, Alexander Jennings, as tenants in common. Irving Hetherington Carruthers, who was named sole executor and trustee, in 1921, endeavored to probate the will of his father-in-law, but no court could be found which would exercise jurisdiction. Two prior wills of members of the Jennings family purporting to devise Swains Island, were probated in the American consular court at Apia, Samoa. However, the ex-territorial jurisdiction formerly exercised by the American consular court at Apia came to an end upon the conclusion on December 2, 1899, of the convention to adjust the question between the United States, Germany, and Great Britain in respect to the Samoan Islands, and the American consul at Apia, since he now exercises no judicial powers, is without authority to probate the will or to grant letters testamentary.

Mrs. Carruthers died intestate in August, 1921, and letters of administration were granted by the British high court of Western Samoa to Mr. Carruthers, who was appointed guardian of the five minor children and administrator of the estate of his deceased wife. It is understood, however, that the letters of administration granted by the British court affect only such property of the estate as is situated in Western Samoa and do not cover Swains Island, over which that court has declined to exercise jurisdiction. Both Mr. Carruthers and Mr. Jennings, who apparently is not satisfied with Mr. Carruthers's management of the property, are desirous of having the jurisdiction of the administrative and judicial authorities of the Government established in American Samoa by the Navy Department extended to Swains Island. The matter was brought to the attention of the Navy Department and that department, under date of March 30, 1921, expressed doubt whether the judicial authorities of the Government established in American Samoa were vested with requisite jurisdiction under existing circumstances of undeclared American sovereignty over Swains Island to probate the will of Eli Hutchinson Jennings.

The status of Swains Island, so far as the jurisdiction of the United States is concerned, can not accurately be defined. The island, under the name Quiros, appears on the list of guano islands appertaining to the United States, which have been bonded under the act of Congress approved August 18, 1856. That act, the provisions of which are embodied in sections 5570-5578 of the Revised Statutes, authorizes the President, in his discretion, upon the fulfillment of the conditions enumerated therein, to declare that islands or keys not within the jurisdiction of any other government, and upon which guano deposits have been discovered by American citizens, shall appertain to the United States. It is questionable, in view of the interpretation given the act of August 18, 1856, by the courts, whether an island declared to appertain to the United States becomes thereby a part of the territorial domain thereof. In the case of *Graffin v. the Nevassa Phosphate Co. of New York* (35 Fed. p. 474), the court stated in part as follows:

"Looking to the language and purpose of the act of Congress, which is entitled 'An act to authorize protection to be given to citizens of the United States who may discover deposits of guano,' we find nothing which indicates that it was the intention of Congress to claim title to or to recognize in the discoverer, who was to be protected in the exclusive occupancy of the island for the purpose of obtaining and shipping guano therefrom, any title to the land; on the contrary, the provisions of the law entirely negative any idea that such islands were in any sense to become part of the territorial domain of the United States. It is clear that the United States extends its protection to the discoverer and his assigns solely to enable him to obtain the guano. The act of Congress does not authorize or countenance the establishment of any form of governmental authority or local tribunal; it does not look to colonization or permanent settlement. It treats these islands, as in fact they are, as unsuited for permanent settlement by civilized communities, and as only temporarily occupied for the purpose of obtaining the guano."

I may also mention that a further complication with regard to the status of Swains Island arises from the fact that no guano has, at least for some years, been removed from the island, and the question whether the limited jurisdiction conferred by the guano islands act continues over an island after the removal of guano has ceased does not appear to have been passed upon by the courts. While it is questionable whether the United States has acquired sovereignty over Swains Island by reason of the provisions of the act of August 18, 1856, it appears to be clear that no other country is in a position to assert claim to the island. The fact that the island is included in the list of guano islands appertaining to the United States and has since 1856 been continuously in the possession of the Jennings family, who have always regarded themselves as American citizens, and that American jurisdiction over the island has been recognized by Great Britain, the only other country which might be in a position to dispute an American claim thereto, would seem to place upon this Government the responsibility either of extending its sovereignty over Swains Island and assuming the obligations which such a course would necessarily entail, or of disclaiming the exercise of any control or jurisdiction over the island and the inhabitants thereof.

The Attorney General of the United States in an opinion dated February 8, 1918 (31 Op. p. 216), regarding the extension of sovereignty over the Swan Islands, whose status appears to be similar to that of Swains Island, stated in part as follows:

"These facts and circumstances are sufficient, in my opinion, to warrant the statement that no other country has any proper claim to these islands, and that

the United States Government may at any time assert its sovereignty over them by appropriate action. As to the form which that action should take, that is a matter for the consideration of the Executive and of the legislative branches of the Government as a political measure relating to acquisition of territory. (See *Foster v. Neilson*, 2 Peters 253 (1829); *Garcia v. Lee*, 12 Peters 511 (1838); *United States v. Lynde* (1870), 11 Wall., 632), and not a proper subject upon which this department should give an opinion."

Under the circumstances, I am of the opinion that it would be desirable to have Congress indicate its desire or willingness to extend the sovereignty of the United States over Swains Island and to place it under the jurisdiction of the administrative and judicial authorities of American Samoa.

It is believed that the purpose might appropriately be accomplished by a joint resolution of Congress along the lines of the attached drafts. This draft has received the approval of the Secretary of the Navy.

Respectfully submitted.

CHARLES E. HUGHES.

DEPARTMENT OF STATE,
Washington, May 22, 1924.